

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg
. Chapter 11
.
MOTORS LIQUIDATION COMPANY, . (Jointly administered)
et al., f/k/a GENERAL .
MOTORS CORP., et al, . One Bowling Green
. New York, NY 10004
Debtors. .
. Wednesday, November 1, 2017
. 4:09 p.m.
.

TRANSCRIPT OF STATUS CONFERENCE HEARING REGARDING
THE PRE-TRIAL HEARING (CC: DOC NOS. 14092, 14093,
14095, 14114, 14115, 14117) HEARING REGARDING "PLAINTIFFS'
ENFORCEMENT MOTION" AND THE "FOREBEARANCE AGREEMENT
APPROVAL MOTION."

BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtor: King & Spalding LLP
By: ARTHUR STEINBERG, ESQ.
1185 Avenue of the Americas
New York, New York 10036-4003
(212) 556-2158

For the Ignition Switch plaintiffs and certain
non-Ignition Switch plaintiffs: Brown Rudnick LLP
By: EDWARD S. WEISFELNER, ESQ.
HOWARD S. STEEL, ESQ.
7 Times Square
New York, New York 10036
(212) 209-4917

APPEARANCES CONTINUED

Audio Operator: Matthew, ECRO

Transcription Company: Access Transcripts, LLC
517 Dell Road
Landing, NJ 07850
(855) 873-2223
www.accesstranscripts.com

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TELEPHONIC APPEARANCES (Continued):

For Personal Injury
Accident Plaintiffs:

Goodwin Procter LLP
By: WILLIAM P. WEINTRAUB, ESQ.
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
(212) 813-8839

For Motors Liquidation
GUC Trust:

Gibson, Dunn & Crutcher LLP
By: MITCHELL KARLAN, ESQ.
200 Park Avenue
New York, NY 10166-0193
(212) 351-4000

For Certain Personal Injury/Death Plaintiffs: Hilliard Munoz & Gonzales LLP
By: ROBERT HILLIARD, ESQ.
719 South Shoreline Boulevard #500
Corpus Christi, Texas 78401
(361) 882-1612

For New General Motors: Quinn Emanuel
By: JAMES C. TECCE, ESQ.
JULIA BESKIN, ESQ.
SUSHEEL KIRPALANI, ESQ.
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7199

For the Ignition Switch
 plaintiffs and certain
 non-Ignition Switch
 plaintiffs and states
 of California and
 Arizona:

Hagens Berman Sobol Shapiro LLP
 By: STEVE W. BERMAN, ESQ.
 1918 Eighth Ave.
 Suite 3300
 Seattle, Washington 98101
 (206) 623-7292

For Motors Liquidation Gibson, Dunn & Crutcher LLP
GUC Trust: By: MITCHELL KARLAN, ESQ.
 200 Park Avenue
 New York, NY 10166-0193
 (212) 351-4000



1 (Proceedings commence at 4:09 p.m.)

2 THE COURT: All right. This is Judge Glenn. We're
3 on the record in Motors Liquidation Company, 09-50026. This is
4 on the record, and let me advise all parties that there is a
5 reporter for Law360 who's present in the courtroom.

6 Who's going to begin? Hello?

7 MR. HILLIARD: Judge Glenn, can you hear me?

8 THE COURT: Yes, I can.

9 MR. TECCE: Yeah.

10 MR. HILLIARD: Judge Glenn, this is Bob Hilliard.
11 The issue that has caused us to need the Court's attention, as
12 I understand it, is whether or not New GM is allowed to
13 participate by examining witnesses during depositions, and I
14 think what both sides need is the Court's help in interpreting
15 the scheduling order where the Court ordered that GM withdraw
16 all of its discovery, but also ordered that GM could
17 participate in discovery.

18 And, you know, it was my position with both GUC and
19 New GM that that meant they can look at documents, but they
20 cannot independently examine witnesses that GUC examines, and
21 they disagree. And that's why we have come to you, to try to
22 get some clarity as to can New GM examine witnesses during
23 depositions along with GUC, and our very brief argument is that
24 would be double dipping. Their interests are aligned, and the
25 Court's intent in allowing them to participate was to have full



1 access to documents, but not to send out discovery or conduct
2 discovery through depositions, which would, in my view,
3 respectfully, be inconsistent if they can do their discovery in
4 depositions, but they cannot send out discovery.

5 THE COURT: Let me hear from any of the other
6 plaintiffs' counsel.

7 MR. WEISFELNER: Judge, it's Ed Weisfelner. The only
8 thing I'd add is we're talking about phase one discovery,
9 which, as defined in the scheduling order, goes through the
10 question of whether or not we have an enforceable agreement,
11 and I'd just remind the Court, as I'm sure the Court's already
12 aware, New GM is not a party to the settlement agreement.

13 While they may be a party in interest generally under
14 1109, and we're not talking about their standing in connection
15 with enforcement of the settlement, should Your Honor agree
16 with us that it's an enforceable agreement, we're only talking
17 about phase one, which again they were never a party to. I
18 have nothing else to add, Judge.

19 THE COURT: Okay. Anybody else on the plaintiffs'
20 side want to be heard?

21 All right. Let me hear from the GUC Trust.

22 MR. KARLAN: Your Honor, this is Mitch Karlan for the
23 GUC Trust. I don't perceive this as our issue, but I will say
24 that I certainly understood Your Honor at the last hearing we
25 had in court to say that New GM could participate in discovery,



1 and that's what the order says, but Your Honor will tell me if
2 I'm misunderstanding it.

3 THE COURT: Okay. Let me hear from counsel for New
4 GM.

5 MR. TECCE: Good afternoon, Your Honor. This is
6 James Tecce of Quinn Emanuel on behalf of New GM, and I'm
7 joined by my partner, Mr. Kirpalani and Ms. Beskin. Your
8 Honor, we requested the conference. We submit, respectfully,
9 that the pretrial order is unequivocally clear. And just to
10 frame the issue more precisely, this is not a dispute about GM
11 having propounded too many deposition notices. This is not a
12 dispute about GM taking discovery of plaintiffs that's
13 unwanted. This is a dispute about whether or not General
14 Motors's lawyers can attend depositions.

15 And to be clear, Your Honor, there are ten trial
16 witnesses that are listed on the plaintiffs' witness list, and
17 there are two trial witnesses that are listed on the GUC
18 Trust's witness list. And New GM does not have a separate
19 list. Those two lists are encompassing, as far as they're
20 concerned.

21 They anticipate that those ten trial witnesses will
22 be deposed, and New GM intends to appear at those depositions
23 and to participate. It does not intend to duplicate the
24 efforts of parties conducting examinations, but it does reserve
25 the right to propound its own non-duplicative questions.

1 And to be clear, this was an issue that was argued at
2 the October 3rd hearing. It was raised. The idea of limiting
3 General Motors's participation in discovery was raised and
4 argued, and the Court, on page 63 of the transcript and 66 of
5 the transcript, we think, specifically authorized General
6 Motors to join in the GUC Trust in taking depositions, and it
7 did so again on page 72. So the pretrial order that was very
8 heavily negotiated by the parties, and it appears that docket
9 14130, that pretrial order carries out and faithfully reflects
10 the Court's ruling. Court told my partner, Mr. Kirpalani, on
11 page 63, "You can discuss with plaintiffs' counsel taking a
12 maximum of three depositions, not to exceed four hours in
13 length each, of plaintiffs or putative class representatives."

14 The Court told Mr. Hilliard on page 66 at line 10 to
15 13:

16 "I don't anticipate ruling on the standing motion in
17 advance of the trial. Just to make that clear, I'm
18 not suggesting that any of the counsel for New GM
19 would go on a blitzkrieg about discovery, but if they
20 did, I would probably crack down pretty tight, just
21 to make that clear."

22 And then on page 72 at line 22 to 73, line 6, in
23 addressing the issue of counsel depositions, the Court said:

24 "Just to make clear, Mr. Kirpalani or Mr. Karlan,
25 you've got to reduce the number of counsel you're



1 going to depose. Find out from Mr. Karlan who are
2 the principal negotiators on their side, and, you
3 know, I'm going to put limits on how many
4 depositions."

5 And coming out of that hearing, Your Honor, the
6 parties very heavily negotiated the pretrial order, and it says
7 in paragraph four, quite clearly and consistent with the
8 hearing, quote, "New GM is permitted to participate in and
9 obtain access to all such discovery involving any party," end
10 quote.

11 And it states that specifically in a paragraph that
12 also says that that participation is without prejudice to the
13 rights of the plaintiffs and the participating unitholders to
14 object to their standing. But New GM is a party for
15 definitional purposes under the order. Parties under the order
16 can participate in discovery. Participate means partake and
17 nothing less, and it certainly does not mean review deposition
18 transcripts.

19 To be clear, though, Your Honor, New GM has been very
20 judicious in exercising its right to participate in discovery.
21 The pretrial order withdrew New GM's demands on the plaintiffs
22 and its document demands on the participating unitholders.
23 When the deadline came under the pretrial order to propound
24 document demands, New GM did not propound additional document
25 demands.



1 It simply joined in those propounded by the GUC
2 Trust. And since the October hearing, New GM has noticed one
3 deposition, and that's of Mr. Goldman, who is listed as a trial
4 witness by plaintiffs, and it has cross-noticed
5 Mr. Weisfelner's deposition, who's also listed as a trial
6 witness by plaintiffs, and it will presumably cross-notice the
7 other depositions that are being scheduled.

8 And there may be one witness beyond the trial
9 witnesses, but the pretrial order specifically says that New GM
10 can take a participating unitholder deposition. That's being
11 evaluated right now. No deposition notice has been issued.
12 But by the express provisions of the order, there is no
13 justification to exclude them from attending depositions and
14 asking questions or propounding their own deposition notices.

15 The final point I make, Your Honor, is that it bears
16 noting that if we are excluded from discovery, and this is why
17 it was something that my partner pushed for at the last hearing
18 and why we pushed for in negotiating the pretrial order. The
19 Court indicated that it will not decide the standing issue
20 until the eve of trial, and if the Court finds that New GM is a
21 party in interest, either depositions will have to be
22 reconvened at that point to allow New GM to take them and
23 propound the questions they would have asked had they been
24 allowed, or on the flip side, they will have been excluded and
25 not given an opportunity to take depositions of witnesses that



1 will be examined at the trial. But there's no prejudice to the
2 plaintiffs because, first, New GM will not duplicate the
3 efforts of any other examining party, but secondly, these
4 depositions are going to be rather discrete, perhaps four to
5 five hours apiece.

6 New GM's deposition is not going to change the time
7 delay or the time that's allotted for these depositions. So
8 we'd respectfully submit that the pretrial order is clear, that
9 the record from the hearing is clear, and that there's no basis
10 to renegotiate that order, there's no basis to collaterally
11 attack that order, and there's no basis to raise again whether
12 GM has standing to participate in the discovery in dispute.

13 THE COURT: Let me -- I want to make sure I
14 understand. The issue for today is only with respect to the
15 depositions of the ten trial witnesses that the plaintiffs have
16 identified. Is that correct, Mr. Tecce?

17 MR. TECCE: No, Your Honor, it's not. The issue for
18 today is whether GM has standing to attend any deposition,
19 standing to ask questions at any deposition, and standing to
20 serve notice of any deposition. That's the issue for today.

21 THE COURT: Well, let me -- I -- at this stage --

22 MR. TECCE: Notwithstanding the clear provisions of
23 the order, I might add.

24 THE COURT: -- I'm not deciding -- I don't view that
25 as the issue today, Mr. Tecce. You may, but I don't. As of



1 now, as I understand it, the plaintiffs have designated ten
2 trial witnesses and the GUC Trust one?

3 MR. TECCE: Two witnesses, Your Honor.

4 THE COURT: Two.

5 MR. TECCE: Two witnesses, who are subsumed by the
6 ten. So there are ten total, two shared by the GUC Trust,
7 and --

8 THE COURT: And I want to make clear that all I'm
9 deciding today is whether or not New GM can participate in the
10 sense of asking questions of the ten witnesses who have been
11 identified as trial witnesses. I am not deciding today
12 whether, in the event of a dispute as to depositions of other
13 witnesses, whether New GM can or can't participate in taking of
14 the depositions.

15 So no one should understand anything that I rule
16 today to open the door to broader questioning, noticing of
17 depositions, or questioning of deponents other than the ten who
18 have been designated by the parties so far.

19 And, Mr. Tecce, you've indicated that the GUC Trust
20 has identified two witnesses, but they're within the ten that
21 New GM has already identified. I'm correct in that, Mr. Tecce?

22 MR. TECCE: That's correct, Your Honor. The
23 plaintiffs have identified ten, the GUC Trust two. The two
24 identified by the GUC Trust also appear on the plaintiffs'
25 list.



1 THE COURT: Okay. As to those ten deponents, I am
2 permitting New GM to participate in non-duplicative questioning
3 of the deponents. The time allotted for the depositions is not
4 being expanded. I want -- I recognize that the parties are
5 going to brief and that I am going to have to decide -- in all
6 likelihood have to decide whether New GM has standing to object
7 to the issue of whether the plaintiffs' alleged agreement with
8 the GUC Trust is enforceable. I didn't decide it, and I made
9 clear I don't intend to decide it in advance of the hearing.

10 I want to be able to decide it on a reasonable,
11 factual record. I don't want to have to do this twice, and if
12 I preclude New GM from participating in the discovery with the
13 conditions that have been discussed and I ultimately determine
14 that New GM has standing, I don't want them to be faced with
15 the issue of having to reopen discovery, but I also don't want
16 to be in the position of having to decide this issue now
17 without an adequate factual record. I don't want to slow down
18 the schedule for the trial scheduled in December. I want to
19 move forward and decide these issues. It's important to
20 everybody.

21 And so I'm going to permit New GM to participate in
22 the depositions by asking questions, non-duplicative questions,
23 within the time limits that have already been established for
24 the depositions for the ten witnesses who've already -- trial
25 witnesses who have been identified.



1 If the issue arises -- and I understand you're still
2 considering, Mr. Tecce, whether you wish to take the deposition
3 of a unitholder, and if you can't resolve that issue among
4 yourselves, you can arrange another call with me. I'm not
5 going to deal with that today. Today, all I'm dealing with is
6 the depositions of the ten trial witnesses. Have they been --
7 have the depositions been scheduled at this point?

8 MR. KARLAN: Most of them, Judge, yes.

9 THE COURT: Okay. And I assume that you're -- that
10 -- scheduling them is not a problem, you're working that out
11 among yourselves?

12 MR. KARLAN: I believe that's correct, Judge.

13 THE COURT: Okay. I'm not shy about making
14 decisions, but I only want to be making this decision once,
15 whether the settlement agreement is enforceable or not, and
16 whether New GM has standing or not, I don't view as necessarily
17 a simple issue. And I'm trying to move this all along on quite
18 a -- what I consider to be a rapid schedule. We're moving
19 towards this December trial. Time is relatively short. I
20 fully expect and anticipate you'll all cooperate in getting the
21 discovery done within the time.

22 Any other issue for today? Let me ask the
23 plaintiffs' lawyers first.

24 MR. HILLIARD: Judge, this is Bob Hilliard. I will
25 say that given the Court's standing in December that all sides



1 have been, you know, relatively cooperative in getting
2 witnesses scheduled and documents produced. I think all of the
3 productions are substantially complete. There's one pending
4 issue not ripe yet that we may come back to the Court on on
5 some GUC Trust documents that are yet to be produced, but I'm
6 working with Mr. Lovitz to get those to us before the
7 depositions start. But this was really the only first
8 roadblock that we've had.

9 THE COURT: Okay. Anything -- anybody else on the
10 plaintiffs' side want to be heard?

11 Anybody else, either New GM or the GUC Trust?

12 MR. KARLAN: Your Honor, this is Mitch Karlan. Your
13 Honor alluded a couple of times to time limits for the
14 depositions, which I --

15 THE COURT: Yes.

16 MR. KARLAN: -- which I favor, but I -- and I'm happy
17 to be corrected. I don't think there are any time limits at
18 the moment. I would like there to be time limits shortened.

19 THE COURT: I thought I -- I didn't look -- I have
20 the order in front of me, but frankly, I didn't have time to
21 read it again before I took the bench. Isn't there any -- in
22 the transcript, I thought I talked about time limits on
23 depositions.

24 MR. TECCE: Your Honor, this is James Tecce. The
25 plaintiff depositions, to the extent that they go forward, they



1 are limited in time to four hours. For the others, there are
2 whatever limitations are imposed by the federal rules, but your
3 order specifically speaks in paragraph 4 to the extent that
4 there are three individual plaintiff depositions --

5 THE COURT: Okay.

6 MR. TECCE: -- they are not to exceed four hours.

7 MR. KARLAN: Judge, this is Mr. Karlan. I would ask
8 that that limit be imposed on all the depositions.

9 THE COURT: Let me hear from the plaintiffs lawyer.
10 What's -- so the plaintiffs' have got a four-hour limit for
11 some of the depositions, correct. I didn't ask to -- this is
12 in -- on page 5, if deposition discovery of individual
13 plaintiffs occurs, there will be no more than three individual
14 plaintiffs deposed for a maximum of four hours each as
15 determined jointly by the GUC Trust and New GM. I want to hear
16 from the plaintiffs about time limits on depositions for the
17 other witnesses.

18 MR. HILLIARD: Your Honor, this is Bob Hilliard. I
19 was operating under the idea that the four hours would likely
20 apply to all of the witnesses, and so we're not -- I don't
21 believe that we're going to need more than that for the ten
22 that are listed. I agree with Mr. Karlan that a limit as to
23 all of the fact witnesses, not just the plaintiffs, should be
24 considered, and four hours is reasonable to the plaintiffs.

25 THE COURT: Anybody else on the plaintiffs' side want



1 to be heard?

2 Anybody from the GUC Trust or New GM?

3 MR. KARLAN: Four hours is great, Judge. I'm sorry,
4 was that the question, four --

5 THE COURT: Yeah, it was a question. Yeah, it was a
6 question I wanted to find out what your side's position was.

7 MR. KARLAN: Yes, four hours is good.

8 THE COURT: You know, the only time that ever runs
9 into a problem is if one side deposes them for three hours.
10 Oh, you only have one hour left on your side. And my view
11 about time limits on depositions is they're the presumptive
12 operative time limits unless the parties agree otherwise, you
13 know, it's usually during a deposition --

14 MR. KARLAN: Your Honor, I don't think that --

15 THE COURT: My view is four hours is usually enough.

16 MR. KARLAN: Your Honor, I'm going to be surprised if
17 there are any witnesses where both sides examine. I think
18 since these are trial witnesses we're talking about --

19 THE COURT: All right.

20 MR. KARLAN: -- it'll just be one side examining.

21 THE COURT: That Mr. Karlan speaking again?

22 MR. KARLAN: I'm sorry?

23 THE COURT: Was that Mr. Karlan speaking?

24 MR. KARLAN: Oh, yes. I'm sorry, Judge, yes, it's
25 Mitch Karlan.



1 THE COURT: I just want to make sure because we have
2 a transcript that's being made, and I want to make sure it's
3 clearly identified who's speaking.

4 So, all right, everybody's in agreement. So the
5 four-hour time limit applies to all of the deponents then. And
6 so today, we're dealing with the ten trial witnesses that have
7 been identified by any of the parties in interest at this
8 point, and there already is provisions in the order about
9 individual plaintiffs being deposed. That hasn't come up yet.
10 If there are other issues, call the court and we'll resolve it
11 if you can't agree. Okay?

12 MR. TECCE: Your Honor, do you want me to -- just
13 one point. It's James Tecce again. I wanted to be clear about
14 one thing, that there are ten trial witnesses, but one of the
15 issues just -- it's not an issue for today -- that may require
16 is the extent to which -- there may be some disagreement as to
17 the extent to which all ten should be trial witnesses,
18 including one which may be proffered as an expert by the
19 plaintiffs, and that's something that's being reviewed by us.
20 But so -- while I was very intent on identifying the ten trial
21 witnesses, I would not want to be construed that we concede
22 that all ten witnesses are acceptable to being trial witnesses
23 or that we would consent to that. I think it's something that
24 probably would be discussed among the parties and may require
25 further relief from the Court.



1 THE COURT: What I'm -- look, ten witnesses have been
2 identified. Fact or expert, I'm not particularly focused on
3 today. All ten of those can be deposed. I'm not -- by
4 indicating that, I'm not deciding any other issues as to
5 whether one side or the other has objections to one or more of
6 the witnesses. If that issue arises, I'll deal with it, as
7 well. Does that satisfy you, Mr. Tecce?

8 MR. TECCE: That's fine. Thank you very much, Your
9 Honor. I appreciate it.

10 THE COURT: Okay. Anything on the plaintiffs' side?

11 MR. HILLIARD: Your Honor, Bob Hilliard. One thing
12 occurs to me is there are three sides to the plaintiffs' side.
13 There's the economic loss, the personal injury and wrongful
14 death side, and then there is the unitholders, all of which
15 believe that this was a deal and all of which intend to
16 participate in the discovery, including the depositions. I
17 just wanted to be sure that everyone on the call was aware of
18 and the Court was aware of that there will be no duplicative
19 questioning, but there will be questioning from all three of
20 those parties particularly in any or all of the depositions.

21 THE COURT: So you know what I -- Mr. Hilliard, when
22 I was in practice in multiparty cases, what I've had judges do
23 to me and to other counsel, and I think there's only one or two
24 cases where I've done it, is require -- so every -- you know,
25 everyone on your side -- by your side of the table, everyone



1 who supports the enforceability of the agreement, I understand
2 you have different interests for personal injury, economic
3 loss, unitholders, but I urge you all -- I'm not going to order
4 it -- that you try and agree who will take the lead of the
5 questioning from your side. If there are particular areas that
6 you think should be reserved to personal injury, the lawyers
7 for personal injury plaintiffs, try and work that all out.
8 Clearly, a coordination is going to be required to be able to
9 do these depositions efficiently in the four hours. I will --

10 MR. HILLIARD: I hear you, Judge, and we will get
11 together and be sure to do that.

12 THE COURT: Okay. I have to say because I've done
13 this in a couple cases that I've presided over, and nobody's
14 ever come back to me with any disputes. It's always worked
15 out, so I'm assuming you're all -- you're all good lawyers,
16 that you're all going to work this out.

17 I'm available if need be. You know, I can be
18 available on fairly short notice by telephone. I have some
19 travel plans over the next week or two, but all those travel
20 plans are domestic and there are phones wherever I'll be. And
21 if necessary, you'll get prompt hearings. If you can't work
22 things out, which I hope you will be able to do, I'll be
23 available to work it out. I want to keep on schedule.

24 MR. HILLIARD: And again, Judge, I'm hopeful, given
25 the behind the scenes professional conduct, that you won't hear



1 from us again unless it's a document production issue, but I'd
2 be surprised if you --

3 THE COURT: Okay.

4 MR. HILLIARD: -- if we needed much more of your
5 time.

6 THE COURT: Okay. Thanks very much. All right,
7 we're adjourned.

8 MR. TECCE: Your Honor, thank you very much for your
9 time.

10 MR. HILLIARD: Thank you, Judge.

11 THE COURT: Okay. We're adjourned.

12 MR. KARLAN: Thank you, Judge.

13 (Proceedings concluded at 4:34 p.m.)

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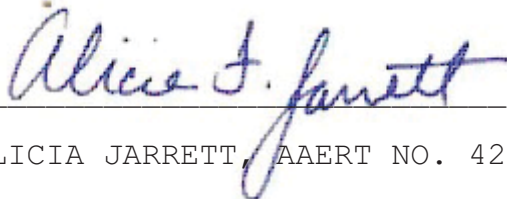
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C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby
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DATE: November 7, 2017

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